IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA	
v.	Criminal No. 3:15CR77
NASSAU LUCAS	April 7, 2016

COMPLETE TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

THE CLERK: Case number 3:15CR77, the United States of America versus Nassau Lucas.

The United States is represented by David Maguire. The defendant is represented by Vaughan Jones.

Are counsel ready to proceed?

MR. MAGUIRE: The United States is ready.

MR. JONES: The defense is ready, sir.

THE COURT: All right. Good afternoon.

MR. MAGUIRE: Good afternoon, Your Honor.

We're here for the sentencing of Nassau Lucas on two counts of being a felon in possession of a firearm in violation of Section 922(g) of Title 18. He's facing on that a maximum exposure of ten years in prison on each count, $250,000 in fines, and three years of supervised release. The guideline range is 140 to 175 months, and there is a motion for a downward variance.

THE COURT: Is the maximum punishment 120 months on each count to be served consecutively or is it -- because the guidelines here are 140 to 175 months. Under Section 5G1.2D, the Court can impose a sentence within the guidelines by imposing the statutory maximum on one count and a consecutive sentence on another count; is that right?

MR. MAGUIRE: Yes, Your Honor.

THE COURT: Is that what you think ought to be done?

MR. MAGUIRE: Yes, Your Honor. That's the stacking rule. It's certainly within the Court's discretion, but it's the way the guidelines normally apply, and I submit that they should apply that way in this case.

THE COURT: All right. Is there any objection to the presentence report?

MR. JONES: No, Your Honor.

THE COURT: Stand up, please, Mr. Lucas.

Have you read the presentence report, Mr. Lucas?

THE DEFENDANT: Yes, sir.

THE COURT: Have you reviewed it with your lawyer? Have you talked to your lawyer about it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand it?

THE DEFENDANT: Yes, sir.

THE COURT: Are there any objections to it?

THE DEFENDANT: No, sir.

THE COURT: All right. You may be seated.

The presentence report will be accepted, adopted, and filed as tendered. It will be placed in

the record. It will be under seal. It will be available in the event of any appeal except for the confidential sentencing recommendation part of it.

Is there any evidence on the variance or sentencing?

MR. JONES: There's no evidence on the variance, Judge. The only evidence I would have on behalf of sentencing are some letters that were tendered to me by various family members that I would proffer to the Court. I've not had an opportunity to show those to counsel for the government, but I will now.

That is the only evidence I have, Judge. I anticipate the government will have evidence.

THE COURT: There's no objection to those letters?

MR. MAGUIRE: No, Your Honor.

THE COURT: Hand them up now, and I'll read them at this time.

Thank you very much.

All right. Do you want these in the file or do you want them to go to the probation office?

MR. JONES: I'd like them to be made part of the file, sir.

THE COURT: All right.

MR. JONES: Judge --

THE COURT: Argument on the variance.

MR. JONES: Yes, sir. Judge, as the Court is aware, I filed a motion for a variance below the correctly calculated sentencing guideline range, which calls for a sentence of 140 to 170 months.

Judge, the factor that I would first draw the Court's attention to under 3553(a) is the nature of the offense. I in no way attempt to minimalize or decry the serious nature of a previously convicted felon or prohibited person from owning a firearm; however, Judge, I would I draw the Court's attention to what has been described in my conversations with the attorney for the government as a quasi entrapment defense or quasi entrapment sentencing position.

This is not an entrapment defense, Judge, and this is not sentencing entrapment as the government mentioned in its guidelines. Sentencing entrapment is a completely different concept that does not apply to this case. But what I bring to the Court's attention is the analysis that years and years of review of entrapment cases have considered, which is there is something to be said for a person who might not have otherwise committed the crime but for the actions of the government. Now, I do not say that there was a

perfect entrapment because clearly the defense in this case would not have been able to overcome the hurdle in this instance of the predisposition part of what would be necessary for entrapment. However, I think when the defendant is accused by the government of possessing firearms, it is a relevant sentencing factor when determining the serious nature of the offense to look at the facts of a case where the government's own agents --

THE COURT: What case are you talking about?

MR. JONES: That makes the position that I'm making to Your Honor now?

THE COURT: Yes. There's nothing that I know of that recognizes that.

MR. JONES: There isn't, Judge. There is not.

THE COURT: There's sentencing entrapment, which you say you're not doing.

MR. JONES: Which does not apply here, sir.

THE COURT: And there's sentencing manipulation, which is not part of what you're doing.

MR. JONES: It is not, sir.

THE COURT: So there's no authority for what you're asking for.

MR. JONES: Judge, there is no authority --

THE COURT: Or cases.

MR. JONES: No, sir. No, sir, there's not, Judge.

THE COURT: Okay. So why should I grant a variance then?

MR. JONES: Because, Judge, although there's no authority to go in this direction, I do think that it is relevant when considering the serious nature of the offense, which is a 3553, undisputed by either side, as a relevant factor. The serious nature of this offense is belied by the fact that this is an offense, and the Court heard all the evidence, that the serious nature of this offense is belied by the fact that the only reason Mr. Lucas committed the actions at issue was because of the very direct command and direction of the two undercover agents.

THE COURT: You're arguing entrapment now. You're arguing entrapment that would be a defense to the case, which you say is not there.

MR. JONES: It would not have been a successful defense, Judge, because the government would have been able to prove predisposition.

THE COURT: Then you can't argue it here.

MR. JONES: I'm arguing that the concept of this defendant taking an action because the government

directed him to --

THE COURT: He didn't direct him to. The facts in the PSR say that the defendant reached out to confidential informant one before the sale of the first gun, not the other way around.

MR. JONES: The facts in the case, Judge, and the facts that I cited to you in my sentencing position paper were also, Judge, that the defendant said on a couple of occasions that the guns that were requested by the agent, and the agent requested specific types of guns, the defendant said, "I don't have them."

THE COURT: That kind. I don't have that model.

MR. JONES: That's accurate.

THE COURT: That's the same thing as saying, Steal me a Corvette, and the guy says, Well, I can't steal you a Corvette because I can't get my hands on one, but I can steal you a Jaguar. That's what this is, what your argument is, it seems to me.

MR. JONES: I would say it's not quite the same.

THE COURT: It's still the intent to steal a car in that example.

MR. JONES: What I would say, Judge, is it

would be the same as if the person said, I don't have a Corvette in my possession. I can go out and commit a crime if you are asking me to, and I'm willing to commit a crime, which makes it not an entrapment defense, but it is relevant, and I do differentiate this case from a scenario where the police do a traffic stop or do a search, and they find incident to that search the defendant to be in possession of multiple weapons, and then the presumption is, well, this person is clearly flouting the rules against a prohibited person owning these types of weapons.

I differentiate that from this scenario where the defendant is saying, I don't have these weapons you request, sir. I can get them. I'm willing to break the law. You have not enticed me illegally such that it would be a defense to breaking the law, but I'm willing to break the law on this occasion at your request.

And, Your Honor, I'm not suggesting that he's entitled to acquittal. I'm merely suggesting that when grading offenses of this particular crime, of 922 offenses, that this is not the most egregious one. And as the Court --

THE COURT: I believe you ought to put that argument away.

MR. JONES: Yes, sir.

THE COURT: That's not very persuasive here on the record of this case.

MR. JONES: Yes, sir.

THE COURT: You also argue -- are you asking for a variance or are you just asking for me to consider 4A1.3 as a departure or are you asking me to consider 4A1.3 as a variance?

MR. JONES: Judge, I believe I requested it as a variance. And the reason I would request it as a variance, and I understand that the Court has just issued an opinion on the argument that I've just made to Your Honor, that this is outside what would generally be a typical 922 violation in that this is a person who was possessing guns at the request of a government agent. And I understand what the Court's said as far as its opinion about that argument.

I would move, Your Honor, in light of the Court's position on that argument to his criminal history category, which is a VI, which is correctly calculated, but I would draw the Court's attention to the fact that this defendant's criminal history is not one which would generally say he is the highest or most offensive prior convicted person who's got prior convictions and that would say he's the highest level

of previous offender. I understand that he's got a high number of offenses.

I understand the government's position saying that there are some offenses that are not even contemplated or calculated in his criminal history; however, be that as it may, Judge, this defendant gets to be criminal history category VI, the highest level, largely on the back of, not exclusively, but largely on the back of driving offenses, misdemeanors. And so that is what has accelerated his guidelines to the high level that it is presently standing.

I would say that he is not the typical criminal history category VI offender in that the majority of his prior convictions are these misdemeanors that I've brought to the Court's attention.

When the Court asked the government, Is this defendant a person who should receive the statutory maximum on one of these two offenses, I disagree with the government quite directly. I do not believe that he is entitled or should be sentenced at the highest level for either one of these offenses.

THE COURT: All right. Thank you.

MR. JONES: I'm sorry, sir?

THE COURT: I said, "All right. Thank you."

MR. JONES: Thank you, Judge.

MR. MAGUIRE: I submit that the sentencing factors, the normal ones, before I address the variance, more than justify if not command a sentence within the guideline range if not at the top end of the guideline range.

The two offenses are very serious; possessing firearms by a convicted felon on two occasions and also the high capacity firearms. You know, the ability of those firearms to mow down a lot of people in a short period of time go to the nature of this offense. So these are very serious offenses, and they weigh heavily in favor of supporting the guideline range.

The lengthy criminal record here also goes to support the guideline range and certainly supports category VI as it is. We have three firearms' offenses. We have two drug trafficking offenses. We have an assault on a law enforcement officer. We've got numerous violations of the Henrico probation by virtue of all the drug uses that he was involved in. I think there's like five to seven of those. And then we have the most important violation of that probation, and it goes to the seriousness in this offense is that he's on probation while he's

committing the current offenses.

So those things together are very, very serious factors militating in favor of a very high and serious sentence.

We also have evidence that he's just not alone. He's got a little network out there. In the first gun deal where we had the female police officer in the car and the defendant is in the seat with her, and they're talking back and forth, and the defendant is pretty happy and smiling, and the deal takes place. And then at some point, if you will recall, we have the tapes here, and I've given the transcripts to the Court, it shows the defendant gets a telephone call in the middle of this and things change. His face changes. And he's saying, I'm out of here. I'm out of here. I'm out of here.

And then we hear further talk. He's gotten a call that there's police in the neighborhood. So to me this is a very important factor showing what this defendant is. He's got other people doing surveillance on this deal that are there to prevent the police from getting at him. So this goes to show he's a very serious offender who's a danger to the public interest.

The most important thing, I think, however,

is that when he's selling this gun, he's not selling it to somebody he believes is a gun dealer or some quasi law-abiding citizen. He believes based on what the guy is telling him he's a gun runner, and he's going to take these guns to New York City and just sell them to the highest bidder.

Where is the human concern on his part for his fellow man, for people who are going to encounter the ultimate recipients of those firearms, and how those ultimate recipients of the firearms are going to use them? There's not one hint of that.

So I submit all that together shows that this is a defendant who is a danger to the community. And from the standpoint of responsible sentencing, while the Court might not want to sentence a young man like him to the top of the range, I think when you look at all of it together there's an argument that you have to.

In preparing for this --

THE COURT: One hundred and seventy-five months?

MR. MAGUIRE: Excuse me?

THE COURT: You mean 175 months?

MR. MAGUIRE: At the top of the sentence, yes, Your Honor. At the top of the range.

In preparing for this, I didn't want to do this, to take such a harsh position, but I looked at everything he had done since 2010. There's just no respect for the law, and there's no conscience about what you're doing, and also there's not the common sense out there to realize you can get caught.

In other words, I think people don't commit crimes for basically two reasons:

(1) Their moral standard prevents them from doing it; and

(2) They realize I can get caught and go to jail.

People like Mr. Lucas don't seem to have either.

When you look at these offenses --

THE COURT: How does 5G1.2 apply here? Which part of it applies?

MR. MAGUIRE: 5G1.2.

THE COURT: The stacking provision. Which part of it applies?

MR. MAGUIRE: If I can get my book, Your Honor.

It's B, Your Honor. If a sentence imposed on a count carrying the highest statutory maximum is less than the total punishment, then the sentence that's

imposed on one or more of the counts shall run consecutively but only to the extent necessary to produce a combined sentence equal to the total punishment.

THE COURT: What's the meaning of the total punishment there?

MR. MAGUIRE: That the total punishment be the total guideline calculation by the -- the total PSR's guideline calculation.

THE COURT: All right.

MR. MAGUIRE: Would the Court like me to address the quasi entrapment argument?

THE COURT: Yes.

MR. MAGUIRE: When I first read it, I was trying to understand exactly what the defense counsel was arguing. He was saying "I'm not arguing entrapment again," but yet all the cases he cites are entrapment cases. And so what he's in effect doing, I realize, and it has support in some cases, is that he's arguing entrapment as a mitigating factor. A quasi entrapment. In other words, if you --

THE COURT: But he says he's not doing that.

MR. MAGUIRE: He may believe that, but I don't think -- when you look at substantially what's happening, that's in effect what he's doing. And to a

great extent he may be better off if he does it that way, and I'm, frankly, interested in having the record reflect the issues in the most appropriate way possible.

And as I read it, what he is arguing is that it's something short of entrapment for guilt purposes at trial.

THE COURT: Yeah, but sentencing entrapment is defined as outrageous official conduct which overcomes the will of an individual predisposed to engaging in minimal misconduct for the purpose of increasing the sentence of the entrapped defendant.

Now, that to me -- and that's how it's defined in U.S. against Jones. He's not arguing that, and I don't understand how the record would possibly support that. And then the other kind of quasi entrapment that we've been able to find is called "sentencing manipulation," which is defined as an outrageous government conduct that offends due process so as to justify a reduced sentence. And that's also in *Jones*, and he's not arguing that.

MR. MAGUIRE: Right.

THE COURT: In essence, what he's saying is, look, he was a reluctant seller in a way because he didn't really have the goods that they wanted, but he

said, "I'll go get them for you." So therefore that should mitigate.

Isn't that your argument, Mr. Jones?

MR. JONES: I think that is the mitigating element.

THE COURT: That what he's saying should mitigate. The issue is whether it should or whether it shouldn't.

MR. MAGUIRE: I think it's being phrased a little bit in the sense of a quasi entrapment. In researching this, and I've spent more time than I ever believed I would, *Jones* is a 1994 case. And in the late '90s you saw the Ninth Circuit coming up with theories of imperfect entrapment.

THE COURT: The Fourth Circuit's never adopted the imperfect entrapment theory of the Ninth Circuit as reflected in those cases.

MR. MAGUIRE: Right, Your Honor.

THE COURT: Frankly, for good reason because the imperfect entrapment theory, frankly, that they use in the Ninth Circuit seems to me, in essence, to be in reality an entrapment rule but just gussied up to provide some amelioration. In other words, it seems to me to be dodging the real question.

MR. MAGUIRE: But I think we have to realize

the pre-Booker context. So what was happening in the pre-Booker context is in undercover operations defendants were probably pleading guilty for the most part but trying at sentencing to use that as a ground for departure because that was the primary vehicle in those days. And some courts were giving it a label of imperfect entrapment. And then there's the other little different categories of sentencing entrapment as *Jones* used it, which is different than this case.

THE COURT: He says he's not pursuing either one of the theories that are articulated in *Jones*.

MR. MAGUIRE: But what I'm saying is that post-Booker some defendants have argued what he's arguing now, and the courts have looked at it in the context of a variance. And the sentencing factors --

THE COURT: That's what he says we should be doing. He's said, Look at the offense conduct. It isn't all that bad because basically the government was involved in it, and he had to go out and get something different than they asked for, and so that ought to be taken into account as an ameliorating factor. That's what he's arguing.

MR. MAGUIRE: I think, admittedly, that's what he's arguing. And I think the present law today is such that it can fit into the wide breadth of

sentencing factors, but you have to have the facts to prove it.

THE COURT: You don't mean that his argument fits there. You mean conceptually you can have some situation that might make it fit, but he doesn't here; is that what you're saying?

MR. MAGUIRE: Right. I think that's what my argument is. I think that's the safest certainly for the appeal. But I think what you have to realize, and it's helped me to read some of the history of entrapment going to the English case law and after. And what you basically have here is the world of encouraged criminal conduct where law enforcement is encouraging the habitual criminal, hopefully, to engage in criminal conduct, which you then punish him for.

And society is faced with this because of the difficulty of detecting and prosecuting certain crimes. So even in English times, they would have these repeat criminals, and there would be in effect undercover stings. And there was absolutely no sensitivity at that point for any entrapped defendant.

As we got into the early 17-, 18-, 1900s, here the government, again, was faced with more and more of the need to do it, but there was really not

much sensitivity to the potential for an innocent person caught up in the sting.

THE COURT: But the law is that you have to have an absence of predisposition one way or the other.

MR. MAGUIRE: Right. That's sort of the current law which started really with *Sorrells* in 1932.

THE COURT: In essence, you don't think he's made out a case for any variance because the facts here show that the defendant was predisposed to violate the law?

MR. MAGUIRE: That's one of the arguments.

THE COURT: That's good enough. Thank you.

I believe that's all I need to hear.

MR. MAGUIRE: Okay. And as I pointed out there, what shows predisposition, just to give you some of the evidence, and I just also want the record to reflect that even though it isn't a true entrapment, I think the entrapment elements are a good analysis which require --

THE COURT: Listen. We're not going to hear argument about entrapment when he's not arguing entrapment. He's just arguing that because the government was involved and ordered up a particular

product, and he didn't have it. He went out to get it. He maybe was even reluctant. But that ought to be taken into account in putting the sentence at the low end of the guidelines or below the guidelines.

MR. MAGUIRE: And my argument --

THE COURT: I got your argument. Thank you.

MR. MAGUIRE: The priors and the facts of the tapes show he was predisposed.

THE COURT: Yes.

MR. MAGUIRE: And --

THE COURT: I understand.

MR. MAGUIRE: So that's the essence of my argument. That's why I have to say that the high end of the guideline to protect the public based on everything that he's done is the responsible sentence to impose.

THE COURT: All right. Thank you very much.

Anything else, Mr. Jones?

MR. JONES: Yes, sir, Judge.

Judge, my final position on whether or not it's a mitigating factor at least to the offense conduct in this particular instance, I would draw the Court's attention back to the evidence that the Court heard at trial to the September 11, 2014 phone call in which there was a phone call where the officer called

Mr. Lucas. And the undercover officer said, "Okay. What's up?"

And Mr. Lucas's direct response was, "Right now I ain't got nothing, but" and then he says, "I might get something." I only draw that to the point that the Court has already understood and already heard me make that at that particular time prior to being called by the undercover informant, the defendant was a prohibited person, but he was not in possession of firearms. He did later commit the crime. I'm only saying to the Court that at one point he was not possessing it and did not possess it until the agent asked him for it. And I think that that is something that does mitigate the offense conduct in this instance.

THE COURT: All right. Thank you very much.

On the ground of variance --

MR. MAGUIRE: Your Honor, if I could just point out that he kind of missed a key part of the quote of that transcript that I think is important to the Court.

THE COURT: What is it?

MR. MAGUIRE: Well, the exact quote, which is on Government's Exhibit 13A, and this is the transcript --

THE COURT: What is it? What's the quote?

MR. MAGUIRE: The quote is, "So right now" -- and this is the target Lucas talking. "Right now I ain't got nothing but, um, chopper." He's admitting he's got the chopper.

THE COURT: That's a word for AK47?

MR. MAGUIRE: SK.

THE COURT: SK, I'm sorry.

MR. MAGUIRE: So he's admitting he's got it in his possession. So he left that particular part out.

THE COURT: Okay. Thank you.

This is not sentencing entrapment as defined by *Jones* or sentence manipulation as defined by *Jones* argued as a ground for variance. It is simply an argument that the -- and the record clearly shows here the defendant was predisposed to commit these crimes. Even the citation that was just given to the telephone call shows that he was predisposed to be in possession of weapons because it says in the quote that he hasn't anything but the chopper. The chopper, the record showed, was an SK47, which is an assault rifle.

So the fact is that the undisputed -- I mean the real record here, and the record shows that the defendant was ready, willing and able to supply guns.

He may have had a lack of supply for a particular kind of gun, but he had guns, and he had a system of getting guns from which he could get whatever was ordered up from him, and he was in the business of supplying those guns, and he made money from it, and he made money in this case from it.

And the fact of the matter is that the very first situation that occurred here in the record is that the defendant reached out to CI-1 before the sale of the first gun. It wasn't the other way around. And that's in the PSR at paragraph 11, and it's not objected to, and for good reason because the evidence at the trial showed it.

The fact of the matter is there isn't anything in the record that I've found that would permit an amelioration of predisposition or guilt that would in any way animate a variance to produce a sentence that is sufficient but not greater than necessary to accomplish the objectives of the guidelines.

To the extent the defendant is asking for a variance or a departure under 4A1.3, the guideline says --

MR. MAGUIRE: Your Honor, if I could just make some correction that I feel compelled to make.

THE COURT: What?

MR. MAGUIRE: When you say "paragraph 11," you're relying on that paragraph 11, that's in the PSR. That came out in the report. There was no testimony from what I can see at the trial about that.

THE COURT: But the point is that's in paragraph 11 and it's not been objected to. So I can consider it.

MR. MAGUIRE: Yes, Your Honor.

THE COURT: But beyond that, the record clearly shows beyond a reasonable doubt that he's clearly predisposed to be engaged in dealing with guns.

And here he's charged with possession of them by a prohibited person. In order to deal with them, you've got to possess them. And so he possessed them in order to do that. And the record clearly established that.

4A1.3 provides for departures downward if reliable information indicates that the defendant's criminal history substantially overrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

The converse of that permits an upward

departure. And the fact of the matter here is there's nothing about the defendant's criminal history category of VI that underrepresents either the seriousness of his criminal history taken substantially or the likelihood of recidivism. The fact of the matter is there are I count, I think, 16 offenses for which he received zero points. The argument is made that they were driving offenses.

Well, what they show -- I'll tell you what his criminal history shows beyond any question is a disregard for the law and a willingness to violate the law whenever he chooses to, and it shows a predisposition to violate the law, and, therefore, a likelihood of recidivism. And the offense, the nature of the offenses, even just those that are counted, are quite serious as the government has argued. So I don't find that a 4A1.3 departure is at all appropriate.

The circumstances of this case, applying the *Rybicki* analysis, simply don't call into play a departure predicate. Even if you do, you identify the guideline, even if there was a basis provided by the assessment of the criminal history, one looks at whether the facts call into play a particular guideline. The only one that's called into play,

according to the defendant, is 4A1.3. And then you look at whether or not the facts of the case call for application of the guideline, here 4A1.3, and they do not at all.

So there wouldn't be any basis for a departure to the extent that's what's intended in pages eight and nine of the defendant's position.

Of course, you can consider a departure ground as a ground for variance even if the proof isn't sufficient to call into play the application of the guideline as a departure. And that certainly is not the case here because the serious nature of the defendant's criminal history and the demonstrated recidivism. So the grounds for a variance are denied.

Is there anything else that needs to be done? Any sentencing argument? No? All right.

Can I hear from the defendant then?

MR. JONES: Yes, sir, Judge.

Judge, I understand the Court's ruling as to whether or not the departure or variance is appropriate. I would ask the Court in considering the 3553(a) factor as to the defendant's characteristics to consider the letters that have been provided to the Court --

THE COURT: All right.

MR. JONES: -- as to his good character. He is joined here in court today by numerous members of his family.

THE COURT: All right.

MR. JONES: I would also ask the Court to consider in going to the low end of the guidelines my argument, although the Court has shown some disdain for it as it applies to a variance.

THE COURT: Disagreement with it.

MR. JONES: A better word, sir. Some disagreement with it. I would argue that it shows and mitigates in comparison to the great -- in looking at the panoply of types of 922 offenses, I think that this shows because he did it at the action of the government that it goes towards the bottom.

Judge, I do concede what the Court has pointed out, Your Honor, that when the offense is to possess something, to be selling it is an aggregating factor. I concede that, Judge, but I ask the Court to mitigate that with the fact that he did so at the behest of the government.

Lastly, Judge, I would argue that given his age, given his personal situation, that 3553 would warrant a sentence toward the lower end. I do not believe that this is the highest end of the guidelines

type of two offenses.

I'll rest on that, sir.

THE COURT: All right.

Mr. Lucas, do you have anything to say before sentence is imposed? If you do, come to the lectern and I'll hear what you have to say.

Yes, sir.

THE DEFENDANT: I just want to apologize to my family for putting them through this type of situation. And I want to say that my criminal history doesn't represent the person I am today.

That's all, Your Honor.

THE COURT: All right.

Applying Section 5G1.2 of the guidelines is an appropriate exercise here as permitted by the guidelines, and considering the guidelines as advisory, and pursuant to 18 U.S.C. Section 3553(a), it is the judgment of the Court that the defendant, Nassau Lucas, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 140 months consisting of 120 months on Count Two and 20 months on Count Three to be served consecutively.

The defendant is remanded to the custody of the United States Marshal.

He shall be placed on supervised release upon release from imprisonment for three years consisting of three years on Count Two and three years on Count Three to run concurrently.

Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which he is released.

While on supervision, the defendant shall not commit another federal, state or local crime, shall not unlawfully possess a controlled substance, and shall not possess a firearm or destructive device.

He shall comply with the standard conditions of supervised release and with the following special conditions:

(1) He shall participate in a program approved by the probation office for substance abuse which may include residential treatment and testing to determine the use of drugs or alcohol, the cost to be paid by the defendant as directed by the probation officer.

(2) He shall provide the probation officer access to requested financial information.

Considering all the financial information and factors, the defendant is not capable of paying a

fine, but he will pay a special assessment of $100 for each count of conviction, Counts Two and Three, for a total of $200.

The special assessment shall be due in full, payable immediately. Any balance remaining unpaid on the special assessment at the beginning of supervision shall be paid by the defendant in installments of not less than $25 a month until paid in full. Payments to begin 60 days after supervision begins. Payment shall be a special condition of supervised release.

Is there a forfeiture in this case, Mr. Maguire?

MR. MAGUIRE: There is, Your Honor. I don't have the forfeiture documents.

THE COURT: Do you have an order?

MR. MAGUIRE: I don't have any of that with me, Your Honor. I'm sorry, I don't.

THE COURT: Well, it hasn't been entered yet, is that what you're saying?

MR. MAGUIRE: Actually, I'm told that -- I'm informed that the estate has been purchased by the ATF from him. There's no need for forfeiture.

THE COURT: All right. There's no forfeiture then.

Mr. Lucas, I'm not suggesting there's a

reason for appeal or a right of appeal, but any appeal that is to be taken must be taken by filing a written notice of appeal with the clerk of the court in 14 days from the date of the judgment of the Court. And if that's not done in that way, in that time, and in that place, then whatever right of appeal that may exist is lost forever.

Do you understand what I said?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Jones, are you appointed or retained?

MR. JONES: Judge, I am retained. I understand Mr. Lucas does intend to appeal. I am going to file a written notice. I believe him now to be indigent. I don't believe that he desires for me to continue on. If the Court would appoint an attorney to represent him in furtherance of the appeal.

THE COURT: It is your responsibility at this stage to file a timely notice of appeal if one is to be filed.

MR. JONES: Yes, sir.

THE COURT: That doesn't obligate you to handle the matter beyond that which by contract you have arranged for with your client. And if you want

to represent the defendant on appeal, you can apply to the Fourth Circuit, and I'm sure they'll be glad to appoint you.

He just said, Mr. Lucas, you don't want Mr. Jones to represent him on appeal. Is that correct or not correct?

THE DEFENDANT: That's correct.

THE COURT: I'm sorry. I confused the way I asked the question. Do you want him to represent you on appeal or do you not?

THE DEFENDANT: I don't.

THE COURT: All right. Well, the Fourth Circuit is going to have to do that. So you'll make arrangements for that.

MR. JONES: Yes, sir, Judge.

THE COURT: All right.

Mr. Lucas, I've imposed this sentence because your record is really atrocious, and there's a need to promote in you the respect for the law, to deter you from violating the laws, which you continually do, and to protect the public from the conduct.

Selling these weapons knowing that they were going up to New York to be trafficked and sold is a bad situation. It could cause death and injury to lots of different people.

It looks to me like you have the capacity from the letters that I've received, which will be placed in the file, and from the fact that you had a good upbringing are capable of being a responsible citizen.

I hope that when you get out of prison that you pursue that aspect of life instead of what you've been pursuing in the past and wish you the very best in the rehabilitation of your life and in the service of your sentence.

Mr. Maguire, here's a notebook that you sent in with your exhibits, and you can have it back.

All right. We'll be in adjournment.

(The proceedings were adjourned at 4:45 p.m.)

I, Diane J. Daffron, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/

DIANE J. DAFFRON, RPR, CCR DATE